State Water Resources Control Board

Alan C. Lloyd, Ph.D.
Agency Secretary

Executive Office

Tam M. Doduc, Board Chair
1001 I Street, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5700 ♦ FAX (916) 341-5707 ♦ www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

January 5, 2006

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Ms. Sabelhaus:

Thank you for the opportunity to provide Senator Perata and his colleagues on the Senate Rules Committee with some of my goals as chair of the State Water Resources Control Board (State Water Board), as well as answer the Senator's specific questions.

I am honored to have the privilege of serving on the State Water Board, and humbled by the great responsibility and trust that service entails. Since 1967, the State Water Board has striven to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use. This is a tremendous charge, and no matter how hard we try and how well we do, there is always room for improvement. I am committed to working with my colleagues on the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) to improve the health of California's waters and their beneficial uses.

Following are responses to the questions asked in Senator Perata's letter of December 16, 2005:

1. General

Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Water Resources Control Board? What are the most pressing problems and challenges you see for the board in the coming years? How do you propose to address them as chair of the board?

I hope to accomplish many objectives during my tenure on the State Water Board – objectives such as: implementing a robust water monitoring and research program; ensuring enforcement actions are timely, fair, consistent and firm; addressing gaps that impede environmental justice; enhancing our scientific and research resources; reducing water pollution from aerial and non-point sources; ensuring equitable

allocation and use of water resources; and building a strong partnership between the State and Regional Water Boards. However, my paramount goal as chair of the State Water Board is to ensure a performance-based organization that delivers results – not only in doing our job, such as adopting policies, issuing permits, and approving grants efficiently and timely – but in demonstrating actual measurable improvements in compliance, water quality, and beneficial uses.

To begin, I am championing a State Water Board reorganization to create an Office of Research, Planning and Performance. This office will develop, coordinate and support a results-based management and accountability system that aligns research, planning, policies, processes, resources, and performance measures to promote: 1) internal efficiency and effectiveness; 2) management, fiscal and environmental results; and 3) transparency and accountability by reporting to internal and external stakeholders.

The Office of Research, Planning and Performance will prepare by April 2006 a workplan for the Water Boards to accomplish the following, with Legislative guidance and public participation:

- **Set Clear Priorities:** We will never have enough resources and time; so the Water Boards must identify and commit to addressing our most important water quality and water rights problems. Plan a course of action to achieve the greatest outcomes for these priorities. Ensure that resources are allocated and used in the most effective and efficient manner.
- **Develop Measurable Targets:** Identify measurable targets and measurement systems for priority problems; these quantifiable targets must demonstrate improvement in water quality, regulatory compliance, staff efficiency, and program effectiveness. Integrate these measures and systems into everyday activities at the Water Boards.
- **Ensure Accountability:** Evaluate and report progress to stakeholders, the Legislature and the public. Ensure that information technology systems collect the right data and produce readily understandable and available reports. Make data and information available on the Internet.

Accomplishing the above will require a collaboration of all the Water Boards. It will require an investment of staff time and resources. It will require organizational culture change. However, I believe it is necessary because in the coming years, water quality and water rights issues will continue to increase in complexity, quantity and variety – and our resources, in terms of personnel and funding, will remain limited. We cannot simply do business as usual and expect increased water quality and beneficial use improvements. We must work with stakeholders to ensure we direct our efforts to those activities that demonstrate the most benefit for California's water resources.

2. Roles/Interactions Among State and Regional Water Boards

Current law establishes a complex state board/regional board structure for implementation of water resources programs. In recent years, this structure has come under increased stress due to the changing nature of water resource challenges in the state.

How do you view the role of the state board in relation to the regional boards?

I believe the State and Regional Water Boards are partners and must work cooperatively to achieve our collective mission to preserve, enhance, and restore California's water resources. The Office of Research, Planning and Performance will facilitate activities to further strengthen this collaboration.

The State Water Board's role is to set statewide policies and provide guidance to the Regional Water Boards to ensure appropriate and consistent application of these policies. Consistency does not mean that Regional Water Boards must take the same approach to a water quality problem, but that their approaches are consistent with the overarching policy and do not create significant inequities among regions. Generally, Regional Water Boards have more direct experience and opportunities to identify and test approaches for solving regional water quality problems. However, the State Water Board must be prepared to act should a regional approach fail to effectively address a pressing water quality problem of statewide concern.

The State Water Board's role is to review and adjust, where appropriate, Regional Water Board actions through the petition process. However, I believe the State Water Board should not depend on the petition process as the primary means for setting statewide policy. Instead, we must be proactive in working with the Regional Water Boards and our stakeholders to identify emerging water resources needs and priorities and take appropriate front-end actions to address them.

The State Water Board's role is to work effectively and collaboratively with Regional Water Boards to ensure the highest water quality that is reasonable. I participate in a monthly conference call with all Water Board chairs to identify issues and discuss collaborative solutions. Also important is the role of each State Water Board member as a liaison to one or two Regional Water Boards. In a recent memorandum to the Regional Water Board members, I outlined the roles and responsibilities of the liaisons and committed the State Water Board to this critical function. I believe it builds relationships and serves as a vital communication tool between the Water Boards' members, especially as we work collaboratively to set priorities, plan actions, identify measurable targets, and ensure accountability.

Do you believe that the state board should have a more centralized role in management of issues and staff at the regional boards?

I support the regionalized approach to management of issues and resources, consistent with statewide policies and priorities; however, I am open to looking at any reasonable alternatives that would allow the Water Boards to operate in a more efficient and cost-effective manner. Within the existing Water Boards system, the State Water Board has the responsibility to set consistent statewide policy, while the Regional Water Boards have the flexibility to pursue different approaches to meet this policy, based on regional needs and conditions. Therefore, it is important for regional executive officers, who are selected by and serve at the pleasure of their Regional Water Boards, to have flexibility in managing the issues of interest to their boards and assigning staff accordingly.

Do you believe that the number and size of the regional boards should be changed?

I do not see a need to change the existing Regional Water Board number and boundaries. The Legislature has fashioned the existing Regional Water Board boundaries based on precipitation, topography, population, and other factors. While not exact, the regional boundaries largely work.

In recent years, there have been several proposals to reduce the number or change the representation of members on the Regional Water Boards. These proposals generally reflect perceived changes in regional water quality needs and concerns, as well as attempts to facilitate maintaining a quorum for Regional Water Board meetings. I am open to exploring alternatives that would improve efficiency and effectiveness – as long as the reduction of or change in board membership does not result in the loss of critical expertise on the Regional Water Boards.

Do you believe that the current compensation for regional board members is appropriate, given the workloads of the regional boards?

The Regional Water Board members I have had the pleasure of knowing are hard working and dedicated. They commit substantial portions of their personal and professional time to Regional Water Board matters. The per diem of $100 does not reflect the amount of work the board members do. Similarly, it does not reflect the important contribution they make to water quality in California.

3. Water Quality/Agricultural Runoff

The Porter-Cologne Water Quality Control Act requires the state and regional water boards to address pollution and discharges from agricultural runoff. Pollution from this runoff is among the most serious water quality problems facing the Central Coast, Central Valley and other regions of the state, in particular affecting water quality of millions of Californians. It is a complicated but critical task to identify and reduce these pollutants.

The state and regional boards have traditionally granted "waivers" of water quality permits (i.e. "waste discharge requirements") to dischargers, rather than requiring permits. These waivers are supposed to contain general conditions to improve water quality and reduce discharges. However, most regional water boards have complained that they do not have sufficient funding and staffing to monitor and enforce waivers.

What steps do you support to reduce water pollution from agricultural runoff? How would you ensure that there is sufficient funding and staffing for the regional boards to perform their jobs in protecting water quality from these discharges? What actions remain to be taken by the boards to reduce agricultural discharges?

Reducing water pollution from agricultural runoff is an important priority for me. Waiver programs provide good opportunities for collaboration on and demonstration of best management practices (BMPs) to address agricultural waste discharges. However, over time and as information is gathered, the various waiver programs must be able to demonstrate their effectiveness – not in the number of dischargers enrolled, inspections conducted and dollars collected, but in water quality improvements achieved. I believe waivers, when issued with clearly specified requirements, focused performance measures, appropriate oversight, and meaningful monitoring programs, are reasonable regulatory approaches for to reduce water pollution from agricultural runoff.

I believe our programs to reduce pollution from agricultural runoff should be properly funded in staffing and resources. To implement the waiver program, the Legislature included 22 positions in the state budget for the 2004-2005 fiscal and ongoing years and specified that the funding for the new positions would come from new waiver fees. The State Water Board adopted a fee schedule for agricultural waivers in September 2005. I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for waiver programs.

The Regional Water Boards and agricultural coalitions/groups should continue the implementation of their outreach, education, and monitoring and reporting programs. Technical workgroups need to be formed to assess the monitoring data and to identify impaired waters. Where necessary, proven BMPs should be identified and growers should deploy them. The Regional Water Boards should also capitalize on opportunities to collaborate with other state and local agencies to share monitoring information, technical expertise and protocols for addressing agricultural discharge concerns.

4. Implementation of SB 810 (Burton)

In the review of timber harvest plans, water quality concerns of regional water boards and wildlife concerns of the Department of Fish and Game have often been

superseded by timber harvest plan approvals by the Department of Forestry and Fire Protection. SB 810 (Burton) of 2003 sought to correct these problems.

What actions has the state board taken to implement SB 810?

As you know, SB 810 vested the responsibility for implementation at the regional level. It prohibits the California Department of Forestry and Fire Protection (CDF) from approving a timber operation if the appropriate Regional Water Board (or, upon delegation, its Executive Officer), finds that the proposed activity will result in a discharge into a sediment-impaired water body, or will cause or contribute to a violation of the regional water quality control plan.

I have found this law to be very successful and instrumental in addressing water quality issues associated with timber harvesting activities. As a result of SB 810, Regional Water Boards have been able to resolve water quality concerns during the interagency review team process or the director's determination period, or through the Regional Water Boards' own regulatory processes. In some key instances, Timber Harvest Plans (THPs) with unacceptable water quality impacts have been withdrawn in the face of a potential "SB 810 veto."

5. Ocean Pollution

The Pew Oceans Report and US EPA both express alarm at the overall condition of the nation's coastal waters. The EPA found that the overall condition of the West Coast's coastal waters were fair to poor. Specifically, 17 percent of these waters were listed as impaired for human and aquatic use, 10 percent impaired for aquatic use, and only 14 percent unimpaired. In addition, California led the west coast in beach closures and advisories with 66.2 percent of its beaches having been closed or advisories issued.

What actions are you taking to reduce ocean pollution and ensure the continued viability of fisheries and recreational use along California's coast?

I am committed to protecting the health of our oceans – a healthy ocean is part of the State's legacy, and is necessary to support California's human and wildlife populations. Reduction of ocean pollution is essential to continue the fisheries and recreational uses along California's coast. In April 2005, the State Water Board adopted amendments to the Ocean Plan, California's water quality control plan for protecting coastal waters. These amendments include the addition of water contact bacteria standards and a requirement to review all exceptions to the Ocean Plan during the Triennial Review. There are other efforts at the State Water Board to address ocean pollution:

- I believe our storm water program, especially the enforcement of the waste discharge prohibition in Areas of Special Biological Significance, is critical to reduce pollution in urban, industrial, construction, and highway runoff.
- I am especially excited about our efforts with the Southern California Coastal Water Research Project to develop Rapid Indicators to monitor for pathogen contamination of beaches. Monitoring is a key ingredient to protecting coastal waters.
- Sewage discharges from cruise ships and other ocean going vessels are a significant problem, and the State Water Board is requesting the USEPA to create a no-discharge zone for sewage discharges from ships in all California coastal waters. I fully support this action.

Additionally, I will strongly push for expeditious completion of the following activities to help address ocean pollution: development of regulations for onsite wastewater treatment systems; development of a statewide policy to address the impacts of once-through-cooling by power-generating facilities; development of sediment quality objectives for toxics substances, applicable to coastal bays and estuaries; and implementation and enforcement of activities to control nonpoint source pollution.

Finally, I believe interagency collaboration and coordination are essential to ocean ecosystem management. The State Water Board is working with the Ocean Protection Council on joint priorities for funding ocean water quality projects. We are also working collaboratively with the Council's staff, and staff from the Department of Fish and Game, the California Energy Commission, and the Coastal Commission to address various water quality concerns.

6. Perchlorate Contamination

Incidences of perchlorate contamination in California's drinking water are on the rise. Last year, the Office of Environmental Health Hazard Assessment (OEHHA) issued its drinking water public health goal (PHG) for perchlorate at 6 PPB.

What actions are you taking to ensure perchlorate water contamination will be cleaned up? Do the state board and the regional boards have standards for the investigation and remediation of perchlorate? If so, what are those standards?

In my prior capacity as Deputy Secretary at the California Environmental Protection Agency (Cal/EPA), I strongly supported OEHHA's health-risk assessment efforts to set the perchlorate PHG and believe, given its threat to pregnant women and their fetuses, that perchlorate in drinking water must be cleaned up as expeditiously as possible.

The Water Boards and the Department of Toxic Substances Control (DTSC) work cooperatively to identify locations of and potential sources and responsible parties for perchlorate water contamination. The highest priority effort has focused on areas around known contamination of public and private drinking water wells. The Central Valley, Central Coast, Los Angeles and Santa Ana Regional Water Boards have taken aggressive enforcement actions against parties responsible for perchlorate contamination. The State Water Board has provided approximately $6 million in funding (from the Cleanup and Abatement Account and Proposition 50) to treat perchlorate contaminated groundwater from existing public supply wells in the Rialto-Colton area.

In the process of identifying potential sources of contamination, the Water Boards use the detection level (4 parts per billion) in public supply wells. For treating perchlorate contaminated groundwater to provide water for drinking water use, the current "standard" is the PHG of 6 parts per billion.

What actions would you take to cleanup the Colorado River water to ensure that Perchlorate contamination is removed?

The source of the perchlorate in the Colorado River is the former Kerr-McGee perchlorate manufacturing facility in Henderson, Nevada. The cleanup of the Kerr-McGee facility is being overseen by the State of Nevada with assistance from the US EPA. Because of the significant potential impact on California's water supplies, State Water Board staff is closely monitoring the progress of perchlorate cleanup at the Kerr-McGee facility, as well as perchlorate concentrations in the Colorado River. We are encouraged that recent perchlorate concentrations in the Colorado River were measured below 3 parts per billion, down from over three times that level in 2000. The US EPA expects perchlorate concentrations to continue to decline based on the success of the cleanup efforts at the Kerr-McGee facility.

7. Impaired Water Bodies/Total Maximum Daily Loads

The state and regional boards have embarked on a multi-year process to develop, adopt, and implement Total Maximum Daily Loads (TMDL's) for water bodies throughout the state. There has been controversy over how waters are identified and listed by the state board, as well as what steps the boards will take actually to implement TMDLs.

Please describe those actions you will take to ensure that impaired waters are identified, and that effective TMDL's are developed, adopted and implemented and enforced in a timely and open fashion.

I am committed to the development of a robust and comprehensive surface water ambient monitoring program (SWAMP), providing high quality data collected with approved quality assurance plans, to ensure that impaired waters are identified and

listed in accordance with the State Water Board's "Water Quality Control Policy for developing California's Clean Water Act Section 303(d) list." The State Water Board recently conducted a workshop to receive preliminary recommendations from the external Scientific Planning and Review Committee (SPARC), which conducted a scientific review of SWAMP's elements. I look forward to receiving SPARC's final recommendations and to their implementation toward a successful and sustainable surface water monitoring effort for the Water Boards.

I am committed to improving scientific support to the Regional Water Boards for the development and peer review of TMDLs. In 2005, the Water Board staff and consultant reviewed how science and engineering are used in the implementation of water laws, policies and programs – including the TMDL program – and prepared a report titled *"Role of Science and Engineering in Decision-Making Within the State and Regional Water Boards."* The report includes recommendations to enhance scientific support to the Water Boards. We will evaluate these recommendations and take action to enhance our scientific resources and enable the Regional Water Boards to access expertise not currently available (e.g., economic analysis and health risk assessment).

I support efficiencies in the TMDL program to allow for "quicker" TMDL development by the Regional Water Boards. Timely completion of a TMDL is dependent on a number of factors including, the complexity of the problem being addressed, the availability of good quality data and models, and the availability of contract resources. However, Regional Water Boards should learn from one another and wherever possible adopt the approach used in successful TMDLs. This approach of using "categorical" TMDL templates has been very successful in developing and adopting the Southern California bacteria TMDLs.

I am aware of concerns from stakeholders and the USEPA about the pace of TMDL development and adoption. In a recent meeting with water officials at USEPA Region 9, I committed to working with USEPA to explore options, including further state-federal cooperation, to streamline and expedite our processes, while maintaining the high level of public participation and high quality of the TMDLs and implementation plans that are being developed by the Regional Water Boards.

For example, how would you address TMDL implementation plans such as the one recently approved by the North Coast RWQCB for the Scott River, which relies on voluntary actions by dischargers to clean up pollution that has impaired the water body at issue?

The State Water Board encourages voluntary action and regulatory actions by other groups to proactively cleanup California's waters. However, these actions must conform to State Water Board regulations, including the non-point source enforcement and implementation policy that requires all discharges to be regulated through permits, waivers or prohibitions.

The TMDL policy requires, where "voluntary" and third party actions are used to implement the TMDL, that the TMDL include: assurances that the actions will successfully meet the wasteload and load allocation; a requirement for monitoring to be able to measure success; and a time frame for the implementation, including a date on which the Regional Water Board will assess the program of implementation and determine if the "voluntary" or third party efforts are successful, or if the Region needs to use its direct regulatory processes (such as clean up and abatement orders, cease and desist orders etc).

8. State and Regional Water Boards Enforcement Program

Last year, the Office of the Secretary of CAL-EPA issued a report on the status and effectiveness of enforcement programs at each of the boards and departments within the agency. Among other things, the report suggested that the state and regional water boards had one of the least effective enforcement programs in CAL-EPA. More recently, there has been discussion of the Central Valley Regional Water Board's lack of enforcement action against Hilmar Cheese Facility, the settlement action, and subsequence action by the state board in rejecting that settlement.

Do you believe that the state and regional water board enforcement programs are at appropriate levels or do they need to be improved?

Concerns have been expressed that the Water Boards' enforcement activities have been inconsistent and may not be based on the greatest risk to water quality. I believe that there is a lot of room for improvement in the Water Boards' enforcement efforts, starting with a clear articulation of expectations and priorities. I also believe that additional resources should be dedicated or redirected to support enforcement activities, especially at the Regional Water Boards.

What specific actions will you take as a state board member to address these concerns about enforcement and accountability at the state and regional water boards?

The Water Boards are accountable to the public to assure the compliance of facilities that we regulate. Enforcement actions taken by the Water Boards must be timely, fair, consistent and firm. I strongly support reorganization to consolidate State Water Board enforcement personnel, including a team of prosecutorial attorneys, into an Office of Enforcement that reports directly to the State Water Board's Executive Director.

My charge to this new Office of Enforcement is to, first, update and strengthen the Water Boards' Enforcement Policy and Plan to reflect priorities based on threat to water quality, to ensure consistent understanding and application by the Regional

Water Boards, and to clearly articulate our expectations to the regulated community. Second, in order to make enforcement accountability clear and visible, the Office of Enforcement will establish quantifiable targets and performance measurement systems for regular reporting to the State Water Board and the public. These targets should address the following: chronic violators, environmental justice, reporting fraud and non-reporting violations, illegal discharges (facilities outside our regulatory net), discharger performance evaluation, penalties, and mandatory penalties backlog. Among other responsibilities to be specified, the Office of Enforcement will ensure the collection and analysis of violation and enforcement information, and provide an annual compliance report card on the Internet.

Will you seek funding or legislative changes to implement those initiatives?

My first priority on enforcement is to complete the activities outlined above. During that process, we will be exploring and developing further ideas and changes, legislative and programmatic, to ensure a successful and appropriately funded enforcement program for the Water Boards. Additionally, through the activities of the Office of Research, Planning and Performance, we will be looking for opportunities in the near-term to maximize the use of existing resources and, where possible and appropriate, redirect funding to support enforcement activities.

What timetable do you envision for completing those initiatives?

The enforcement re-organization will be completed in February 2006. The initiatives I outlined above will begin immediately thereafter. The Office of Enforcement will present their workplan and status report to the State Water Board in June 2006.

9. Numeric Limits in Stormwater Permits

In recent months, the state and regional water boards have been grappling with the issue of whether or not to impose numeric limits on stormwater from industrial sources. This past September, the board held a workshop on the issue and took testimony from experts.

Do you support the use of numeric limits on stormwater discharges? Please explain your reasons for your position. Does the board plan to take action to follow up on its September workshop to adopt numeric limits for stormwater permits? What is your timetable for this action?

I believe it is important to seriously consider the use of science-based numerical limits in stormwater permits and determine where they are appropriate and feasible to achieve water quality protection. This issue is in a pending adjudicative proceeding before the State Water Board. Therefore, I believe it would be inappropriate for me to comment further at this time. The State Water Board's decision on numeric effluent limitations will ultimately be based on the evidentiary

record. We are awaiting comments and conclusions from the storm water panel of experts that met in September. I have directed State Water Board staff to ensure that the panel's report is completed and findings be reported to the State Water Board by March 2006.

10. Surface Water Ambient Monitoring Program (SWAMP)

Most parties (industry, environmentalists, local governments) agree that water quality monitoring is one of the most basic tools used to understand the level of pollutants in water and the steps needed to reduce those pollutants. The surface water ambient monitoring program is a key program in this regard. Despite budget action by the Legislature, funding for this SWAMP program has been delayed, diverted, or otherwise not forthcoming in the amount appropriated.

Do you believe that the SWAMP is adequately funded? If not, what is an adequate level of funding for this program?

There is consensus among all stakeholders that the current program is under funded. SWAMP is currently funded at $3.4 million and 17 staff positions, approximately 7% of what was estimated in the November 2000 Report to the Legislature. Recently, questions have been raised about the discrepancy between the level of current SWAMP funding and the SWAMP budget allocation approved by the Legislature. Concerns have also been expressed about the use of SWAMP funds for the California Integrated Water Quality System (CIWQS). I have directed State Water Board staff to conduct a thorough review of these concerns and prepare a report to the Board in February 2006. This report will be made available to the public.

With the existing budget, the program has focused on enhancement and coordination of existing monitoring efforts and the gradual development of the necessary "infrastructure", including a strong quality assurance program and a data management system, for a comprehensive and comparable monitoring program. Additionally, SWAMP has balanced the rate of program development against the need for regional monitoring. Most Regions are implementing a resource-limited targeted design that provides information on existing conditions in watershed assessment units. The statewide monitoring has not been implemented as designed.

A ten-year implementation strategy for SWAMP was recently approved by USEPA. It was estimated that complete implementation of the Strategy will require an additional 40 staff positions and $35 million in contract funds. This is substantially less than the original estimate and is possible by implementing the efficiencies outlined in the strategy.

How should SWAMP be funded? (e.g. Cleanup and Abatement fund, discharge fee revenues?)

SWAMP was originally funded using State General Funds, but is currently funded by a monitoring surcharge on waste discharge permit fees. I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for SWAMP. Some options that have been mentioned by various stakeholders are: Federal Clean Water Act Section 106 funds; Clean-Up and Abatement funds; Supplemental Environmental Project Funds; and various user and discharger fees.

Are there opportunities to work with other state and regional water agencies to leverage their monitoring activities to enhance the data the Water Boards are developing?

Given our limited resources, I believe collaboration with other agencies to leverage monitoring activities is critically important. The SWAMP Strategy, outlined in "*A Comprehensive Monitoring and Assessment Strategy to Protect and Restore California's Water Quality,*" includes the following tactics to promote an efficient increase in the amount of usable water quality information that is available:

- Improve and strengthen SWAMP by using a monitoring framework and data standards consistent with the guidance developed by the National Water Quality Monitoring Council;
- Develop and promote the use of multiple monitoring tools such as statistically based surveys, judgmental surveys, predictive modeling, risk assessments, expert systems and newer information and monitoring technologies;
- Continue working with monitoring programs currently coordinated through the California Environmental Data Exchange Network (CEDEN) and hosted by the Department of Water Resources; and
- Build stronger partnerships with agencies, watershed groups, volunteer monitors and others to facilitate the sharing of information, the collection of comparable data and the use of monitoring tools.

11. Groundwater Protection

Numerous sources of contamination threaten the state's limited and invaluable groundwater supply. State water quality law requires that the state protect all of its waters, both surface water and groundwater. Numerous regional and statewide water quality management plans exist to protect surface water, yet none exist for groundwater. California voters have signaled their support for increased attention to groundwater by supporting $50 million in Prop 50 bond funding for groundwater management.

Do you believe the board should take action to protect groundwater quality beyond the current groundwater monitoring effort? If so, which actions should the board take?

Groundwater is a critical water resource for Californians and I take very seriously the Water Boards' charge to protect groundwater quality. On January 31, 2006, the State Water Board and Central Valley Regional Water Board are holding a joint workshop to discuss options to address salinity in groundwater and surface water in the Central Valley. I intend to expand this effort to address salinity concerns, including those in groundwater, on a statewide basis.

The Water Boards' groundwater ambient monitoring assessment (GAMA) program is nationally recognized for its innovative and comprehensive approach to statewide assessment of groundwater quality. However, the Water Boards have an extensive groundwater quality protection program in addition to GAMA.

Each Regional Water Board's basin plan includes a groundwater quality component that sets standards/water quality objectives for groundwater. Basin plans also include prohibitions of certain waste discharges, such as septic tanks in areas with significant problems. Implementation of the basin plans includes issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminant sites (e.g., discharges without requirements such as spills and leaks). The first WDRs for landfills were issued in the 1940s. Continued regulation has resulted in over five thousand currently active WDRs for discharges of waste to land.

Discharges of waste that were never authorized are subject to cleanup or abatement. The board cleanup program has closed over 30,000 underground storage tank (UST) sites with 15,000 UST sites under investigation and cleanup, and closed 750 non-petroleum contaminant sites with 1600 sites under investigation and cleanup.

Other significant actions include:

- The UST Cleanup Program reimburses over $200 million annually for investigation and cleanup at UST sites.
- The UST Leak Prevention Program is a national model in setting standards for tank design including secondary containment.
- The State Water Board recently adopted requirements that allow for more rapid degradation of waste in landfills to minimize risk to groundwater quality for future generations.
- The State Water Board anticipates adoption regulations for discharges from septic tanks in 2006.

What actions do you support to ensure adequate funding for the groundwater ambient monitoring assessment program?

Trends in groundwater quality are often only evident over a time period of decades. GAMA, which implements the statewide comprehensive monitoring program developed pursuant to AB 599 (Liu, 2001), must be a long-term program with a stable funding source for continuing monitoring and assessment. $50 million from Prop 50 is being used to contract with the U.S. Geological Survey to monitor and assess the highest 116 priority groundwater basins. GAMA is also annually supported by $1.9 million in waste discharge permit fees (WDPF) associated with the Ambient Monitoring surcharge. The WDPF fees replaced General Funds and supports State Water Board staff, as well as focused groundwater studies, including the voluntary domestic well monitoring program.

I am open to looking at any reasonable funding alternatives to ensure sufficient funding and staffing for GAMA. Some stakeholders have suggested that the most logical source for continuation of the GAMA program is WDPF funding.

12. Brownfield Cleanup

AB 1906 (Lowenthal) of 2004 allocated $10 million per year from the Petroleum Underground Tank Cleanup Fund for brownfield cleanup. The Administration, CAL-EPA and numerous other parties claim that brownfield cleanup is an urgent priority. Yet, it has been nearly a year since these funds were made available and no funds for cleanup have been spent.

What is the status of the board's efforts to ensure these funds are distributed with all appropriate speed to cleanup brownfields?

The State Water Board requested and received an appropriation of $10 million of these funds for the 2005-2006 budget year. Emergency regulations for the program were adopted by the Board on October 20, 2005, and approved by the Office of Administrative Law on November 28, 2005. The application process is underway. Initial grants will be issued in spring 2006.

When will parties be able to apply for these cleanup funds?

Parties can apply for funds at any time. A downloadable application package was posted on the Water Board's website in late November, and a notice announcing that applications may now be submitted was sent out to all appropriate email lists. The initial filing period ends on January 12, 2006.

Why has it taken so long to make these funds available?

AB 1906 became law on January 1, 2005. While the bill provided for $10 million to become available immediately, the funds were subject to appropriation, which did

not occur until July 2005. Also, because the statute is very general, and included eligibility criteria that were different from those used for other UST grants, we felt it would be better if we adopted regulations to establish the ground rules for the program, including the conditions for eligibility, the maximum size of a grant, priority criteria and administrative procedures. Unfortunately, even under the best circumstances, these regulatory processes take time.

I appreciate the opportunity the Legislature has given us with these funds, and I am especially sensitive to their limited availability. State Water Board staff is coordinating with various brownfields stakeholders, including our colleagues at DTSC, and I firmly expect these funds to be fully utilized in the time available (by January 1, 2008) for priority brownfields cleanup projects.

What steps is the board taking to prioritize and expedite the identification and cleanup of brownfields in urban areas so that those lands can be "recycled" and put into productive reuse?

The State Water Board, in coordination with the Regional Water Boards, has initiated a variety of efforts intended to facilitate the investigation and cleanup of sites and return them to productive economic use.

One of our most critical challenges has been providing adequate staffing to cover the brownfields workload. As part of the FY 2005-2006 budget, the State Water Board sought and was approved for an additional 9.5 PYs to address the brownfields workload as part of our Spills, Leaks, Investigations and Cleanup (SLIC) program. With these resources, a brownfields coordinator was established at the Division of Water Quality, and the remaining PYs were allocated to the Regional Water Boards based on each region's share of brownfields work.

The State Water Board, the Regional Boards, DTSC and Cal/EPA has negotiated and signed an agreement with DTSC, designed to improve coordination of cleanup oversight. This agreement, called the Brownfields Memorandum of Agreement, or MOA, spells out a process that is followed in deciding which agency is to be the lead regulatory agency. In addition, the agreement commits to developing common sets of site investigation and cleanup procedures, as well as regularly scheduled coordination meetings. Since its signature on March 1, 2005, oversight responsibilities have been designated for nearly 100 sites.

Outreach is another important aspect of the Water Boards' brownfields program. In late 2004 and 2005, the State Water Board, along with the Regional Water Boards, participated with DTSC and the California Environmental Protection Agency (CalEPA) in a variety of workshops intended to educate brownfields stakeholders and communities on our programs and resources available to assist in addressing brownfields. The focus of these workshops ranged from specific technical presentations on screening levels and liability relief legislation to general brownfields

program overviews. These workshops were well received by those who attended. In coordination with CalEPA and DTSC staff, we are looking at additional outreach opportunities for 2006. One possibility being explored is to team with the State Treasurer's Office and the Business, Transportation and Housing Agency to develop a focused workshop on developing infill housing on brownfields.

13. Water Rights

Please provide a status report on the board's efforts to reduce or eliminate the backlog in issuance, adjudication and enforcement of water rights granted under the law.

I, too, am very concerned about the State Water Board's progress on reducing the water rights backlog. Regardless of the many resource challenges facing the Division of Water Rights (Division), we have an obligation to conduct water rights processes efficiently and responsively. Division management and the State Water Board executive team are exploring options to maximize existing resources, streamline processes as appropriate, and ensure improved response time.

Following is a brief status update, as requested. We would be pleased to provide additional details on any of these items.

Enforcement of water rights is a discretionary action taken on a case-by-case basis. There is no way to estimate the number of potential violators throughout the State without conducting detailed investigations.

There are three types of water right adjudications: (1) statutory or stream system adjudications, which are initiated by outside parties; (2) court reference adjudications, which are initiated by the courts; and (3) ground water adjudications which can be initiated by the Board if certain factual determinations have been made. There are no adjudications currently pending at the State Water Board.

The State Water Board has implemented steps to reduce the "backlogs" in processing water right applications for permits, petitions for changes and extensions of time, and issuance of water right licenses. A review of historical information shows that the backlog in processing water right applications has been reduced by about 25 percent since the late 1970's. Since October 2003, the State Water Board has reduced the number of pending applications from 719 to 617 (as of November 30, 2005).

In 1997 and again in 2002, the State Water Board conducted stakeholder workshops to solicit comments and suggestions on how to improve its water right processes. As a result, the State Water Board has made changes to its practices in processing water right applications and petitions. Since 1995, the State Water Board has

worked with the Department of Fish and Game and federal fishery agencies to develop criteria that can be used to readily identify water right projects that are highly unlikely to impair aquatic resources. Pursuant to the requirements of AB 2121, which became effective January 2004, the State Water Board is in the process of promulgating instream flow requirements to be used in the administration of water rights for rivers in Northern California coastal counties, which is where most pending applications are located.

In the past year, the State Water Board also prepared a feasibility study to determine the benefits of upgrading its water rights computer system. The system that is currently being used was developed in 1995 based on system design that was implemented using a mainframe computer prior to 1980. The State Water Board believes that improving its computer system will result in efficiencies that can be used to further reduce the backlog.

What actions has the State Water Board taken, and how much does it spend, to monitor and enforce water rights to ensure that the waters of the state are not over-appropriated?

I believe water rights enforcement, like all enforcement activities, should be strategic, timely, consistent, fair and firm. The State Water Board's new Office of Enforcement will work with Division management and staff to review water rights enforcement activities and develop an implementation strategy to maximize the use of our limited enforcement resources.

In 2005, the State Water Board enforced against two water large districts in Mendocino County and continues monitoring for compliance with the final orders. The State Water Board also held hearings on proposed enforcement orders against the federal and State water export projects in the Sacramento-San Joaquin Delta and against a large community service district in Southern California. The estimated cost solely for the Division's prosecutions of the two pending enforcement actions in FY 2005-2006 is $450,000. The State Water Board estimates that it spent an additional $250,000 on hearing expenses related to the two enforcement actions.

This year, the State Water Board initiated a proactive water rights investigation of over 700 water storage facilities located within the Russian River watershed in Sonoma County that are not authorized by a known water rights. We anticipate that 200 of these storage facilities will be found to be unauthorized diversions of water. The Division of Water Rights is creating an enforcement priority list of all potential enforcement cases from this investigation.

The Division's Enforcement Section, consisting of the Complaint, Licensing and Compliance units, perform statewide field inspections to review complaints, monitor compliance with permit and license terms and conditions, issue licenses, and conduct special watershed investigations. Last fiscal year, the Enforcement Section was supported with about $2.2 million.

It has been reported that, due to funding shortfalls and lack of staff, the division of Water Rights is unable to act upon complaints and licenses in a timely or adequate fashion. Please provide information on the number of complaints received, the State Water Board response, and the average time frames for responses.

Water rights stakeholders raised these same concerns in 1997, prompting a thorough review of the water right complaint program. During the nine years since that review, the State Water Board received 387 water right complaints. Eighty-two percent, or 316 of these complaints, were timely processed to closure. Another 96 complaints received prior to January 1, 1997, were also closed during the period with the assistance of other program staff. The average time to close incoming complaints is about nine months.

Complaints filed with the State Water Board are becoming more complex and will inherently take time to finally resolve. Additionally, final resolution of some water right complaints must wait for a court decisions or a settlement between parties that elect to negotiate an independent resolution of the issues. Finally, any enforcement taken as the result of a complaint investigation greatly extends the closure date. For example, the State Water Board recently held a hearing on an enforcement initiated following a water right complaint investigation. Final closure of that complaint may take years to exhaust all legal remedies available under law.

Thank you again for this opportunity to provide information to the Senate Rules Committee. As requested, I have reviewed my Form 700, Statement of Economic Interest, and there are no changes to that document. If additional information is needed on any subject area, please contact me at (916) 341-5611.

Sincerely,

ORIGINAL SIGNED BY

Tam M. Doduc
Board Chair